IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COMMUNITY SERVICES, INC.	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
WIND GAP MUNICIPAL AUTHORITY	:	NO. 02-8366

MEMORANDUM AND ORDER

McLaughlin, J. August 7, 2006

This case involves a dispute about sewer fees charged to a property at which three mentally retarded women are living in a community living arrangement. The plaintiff provides community mental retardation services for the women at the property. The defendant is a municipal authority that provides sewer services to the property. The plaintiff alleges that the defendant discriminated against it in violation of the Fair Housing Act and Fair Housing Amendments Act, 42 U.S.C. § 3604(f)(2) ("the Act"), based upon the handicapped status of the residents, when it changed the classification of the property from residential to commercial, and required additional fees and applications.

Before trial, the defendant changed the property's classification back to residential, returned the excess fee payments, and moved to dismiss the case for mootness. The Court denied the motion. Thereafter, the defendant amended the

regulation under which it had classified the property as commercial to provide that "home facilities" such as the property at issue that have residents who qualify under the Act would be charged residential sewer fees.

In this memorandum, the Court decides the defendant's second motion to dismiss for mootness. The plaintiff argues that the case is not moot. The Court concludes that the amendment, in combination with the prior granting of the reasonable accommodation, renders the case moot.

The amendment at issue reads as follows:

> Notwithstanding any other provision of these Rules, home facilities which are occupied and utilized by persons defined as entitled to the benefits of the Fair Housing Act Amendments, as it may be amended from time to time, shall be charged as one EDU (single family residence), with the same benefits and obligations thereof.
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> "Home facilities" are defined to be residences which are occupied as a home by supervised residents, consisting of no more than three clients, and by no more than two non-resident staff persons at one time.

(Mot. Ex. A).

I. Legal Standards

The Court noted in its decision on the first mootness motion that the general standards for evaluating mootness in cases of voluntary cessation are stringent.[1] Mindful of this

[1] The Court stated:

> A federal court lacks jurisdiction to hear a claim that does not present a live case or controversy, and is

stringent standard, the Court nevertheless recognizes that cases must meet the "constitutional requirement of redressability . . . there must be a substantial likelihood that a favorable federal court decision will remedy the claimed injury." Ivy Club v. Edwards, 943 F.2d 270, 276 (3d Cir. 1991).

When defendants amend regulations or ordinances to remedy alleged deficiencies, plaintiffs' claims are sometimes mooted. "If a claim is based on a statute or ordinance that is amended after the litigation has begun, the amendment may or may not moot the claim, depending on the impact of the amendment." Nextel Partners Inc. v. Kingston Twp., 286 F.3d 687, 693 (3d Cir. 2002). The court in Nextel Partners Inc. elucidated the

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> therefore moot. U.S. Const. Art. III, § 2. It is, however, "well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc., 528 U.S. 167, 189 (2000)(quoting City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982)). "A defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case." Friends of the Earth, Inc., 528 U.S. at 174.
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> The standard for mootness in cases of voluntary cessation is "stringent: A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." United States v. Gov't of the Virgin Islands, 363 F.3d 276, 285 (3d Cir. 2004).

Cmty. Servs., Inc. v. Wind Gap Mun. Auth., 2006 U.S. Dist. LEXIS 23385 at *2-*3 (E.D. Pa. Apr. 25, 2006)(internal citations omitted).

applicable standard as follows:

> [I]f an amendment removes those features in the statute being challenged by the claim, any claim for injunctive relief becomes moot as to those features. On the other hand, an amendment does not moot a claim for injunctive relief if the updated statute differs only insignificantly from the original. Similarly, a request for a declaratory judgment that a statutory provision is invalid is moot if the provision has been substantially amended or repealed.

Id. (internal citations omitted).

Courts analyzing mootness distinguish between facial and as-applied challenges. In Nextel West Corp. v. Unity Twp., 282 F.3d 257, 263 (3d Cir. 2002), the court found that claims for relief including a declaration that an ordinance was invalid and an injunction permitting the plaintiff to build its wireless tower were not moot in the face of an amendment. The amendment had "loosen[ed] the zoning restrictions on wireless towers," but "the controversy over its effect remain[ed] alive, and injunctive relief remain[ed] available. According to Nextel, both before and after the amendment, the ordinance effectively prohibited Nextel from locating a tower in any viable location." Id. The court noted that "the amendment in no way redressed Nextel's request for site-specific, injunctive relief." Id. The court held that a claim for "a separate form of injunctive relief that was unaddressed [by the new regulations] . . . was therefore not mooted by" them. Id.

In Lewis v. Continental Bank Corp., 494 U.S. 472, 475 (1990), Continental had originally sued under the Commerce Clause

based upon the denial of its application to establish an industrial savings bank ("ISB") in Florida on the grounds that two state statutes prohibited out-of-state bank holding companies like it from operating ISBs in Florida. Later, a federal statute explicitly permitted Florida to exclude insured ISBs, such as the one Continental hoped to establish. Id. at 476. In finding that the federal statute mooted the case, the Court held:

> Continental contends that it still has a claim for relief because its complaint sought not only the specific relief of ordering [the Florida official] to process the original application, but also a declaration that the Florida statutes were unconstitutional and an injunction against their enforcement in the future. The [federal statute's] amendment, it argues, does not render that requested relief nugatory insofar as it applies to uninsured banks. That may well be so, but the Article III question is not whether the requested relief would be nugatory as to the world at large, but whether Continental has a stake in that relief. Even in order to pursue the declaratory and injunctive claims, in other words, Continental must establish that it has a specific live grievance against the application of the statutes to uninsured ISBs, and not just an abstract disagreement over the constitutionality of such application.

Id. at 479 (internal citations omitted).

II. Application

In this case, only the as-applied and failure to accommodate claims remain because the United States Court of Appeals for the Third Circuit has already determined that the defendant was entitled to summary judgment on the facial challenge to the regulation. Cmty. Servs., Inc. v. Wind Gap Mun.

Auth., 421 F.3d 170, 184 (3d Cir. 2005). In addition, the plaintiff only pursues claims for declaratory and injunctive relief, not claims for damages. (10/17/05 Letter to Court from Plaintiff's Counsel). The plaintiff seeks "a declaration that the Defendant violated the Fair Housing Act and the Fair Housing Amendments Act and ordering the Defendant to assess the Property as the Defendant assesses other single family residential properties." (Compl. ¶ 65).

In deciding the first mootness motion, the Court held that the defendant's granting of the plaintiff's reasonable accommodation request did not moot the plaintiff's remaining claims. The issue at this stage is whether the passage of the amendment in combination with the fact that the plaintiff has already been granted its reasonable accommodation moots the plaintiff's remaining claims. The Court concludes that the plaintiff's claims are now moot because the defendant's behavior is not reasonably likely to recur and there remains no actual case or controversy.

When the Court considered the first motion to dismiss for mootness, the defendant had granted the reasonable accommodation but stated that "'any change in the community living arrangement (CLA) at the property shall require review and approval by the Wind Gap Zoning Hearing Board and all other necessary approvals by the Borough or other agencies as

required.'" Cmty. Servs., Inc. v. Wind Gap Mun. Auth., 2006 U.S. Dist. LEXIS 23385 at *5 (E.D. Pa. Apr. 25, 2006)(quoting Repl. to 1st Mootness Mot. Ex. A). The Court found that this caveat was broad and amorphous, and that, although the plaintiff's status had been restored, there was a reasonable likelihood that the defendant's behavior could recur upon the defendant's arbitrary determination that a "change in the community living arrangement" had taken place.

In the face of an amendment specifically protecting home facilities with the number of residents and staff of the property in this case, the Court concludes that there is no longer a reasonable likelihood that, in the future, the defendant would attempt to charge the property in its current state at the commercial rate.

Although the amendment is limited to the number of residents and staff at the property at issue, the Court will not speculate on what might occur if the numbers were different, because that case is not before the Court. The accommodation granted the plaintiff the relief it sought, and the amendment sufficiently ensured that the relief would not be taken away arbitrarily. In contrast, in Nextel West Corp., the requested accommodation had not been granted to the specific plaintiff, and the amendment had not entirely disposed of the alleged wrongdoing to the plaintiff, but had only partially improved the situation.

As the Supreme Court of the United States stated in Lewis, 494 U.S. at 479, an "abstract disagreement" over the legality of a practice, where the plaintiff no longer has a stake in the requested relief, cannot withstand the requirements of Article III.

At this time, there remains no actual controversy before the Court. The claim for an injunction ensuring the accommodation that the plaintiff has already received is moot. In addition, a declaration by the Court that the defendant's past conduct violated the Act would not affect the rights of the parties, and would be merely advisory. The case is therefore moot.[2]

An appropriate order follows.

[2] In its response, the plaintiff argues that the amendment facially violates the Act. The Court of Appeals has rejected the facial challenge to the regulation. It would not be appropriate for the Court to entertain a second facial challenge to the regulation. In any event, the plaintiff does not explain how it is injured by the amendment.

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ORDER

AND NOW, this 7th day of August, 2006, upon consideration of the defendant's Motion to Determine Proceeding Moot (Docket No. 80), and the response and reply thereto, IT IS HEREBY ORDERED that the motion is GRANTED for the reasons set forth in a memorandum of today's date. IT IS FURTHER ORDERED that this case is DISMISSED AS MOOT. This case is closed.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.